FREEDOM OF INFORMATION COMMISSION STATEMENT ON SENATE BILL 1157, AN ACT CONCERNING REVISIONS TO THE FREEDOM OF INFORMATION ACT CONCERNING EMPLOYEES OF PUBLIC AGENCIES.

March 6, 2023

The Freedom of Information ("FOI") Commission opposes Senate Bill 1157 for the following reasons:

Section 1

Section 1 of Senate Bill 1157 proposes to amend §1-217 of the FOI Act concerning the nondisclosure of the residential addresses of certain classifications of workers. Specifically, the bill proposes to add the following categories of workers: judicial marshals employed by the judicial branch[1]; employees of the Office of the Attorney General; employees of the Disability Determination Services Unit within the Department of Aging and Disability Services ("ADS"); and employees of the Bureau of Rehabilitation Services within ADS[2].

The proposal revives an exhaustive debate in the General Assembly that has been held on an almost annual basis. The concept of adding yet another classification of worker whose residential address would be "protected" has, for the most part, been opposed by advocates of transparency and open records for years.

The FOI Commission understands the security concerns which initially led to the enactment of §1-217, more than 25 years ago. That section permitted public agencies not to disclose the residential addresses of an enumerated list of certain "at risk" public officials such as police officers, judges and others directly involved in the criminal justice system. But every year, it seems, another agency or another profession attempts to have the addresses of its employees included in §1-217, without really understanding the limited scope of the statute.

In March 2012, the General Assembly limited §1-217 (Public Act 12-3), and basically eliminated the idea of restricting any address on a voter registration list. This was done in recognition of the reality that a complete prohibition on disclosure of certain residential addresses is unworkable, impossible, and ignores the public policy behind numerous provisions within Title 9 that require the disclosure of residential addresses on voter lists.

Section 1-217 does not provide a blanket ban on disclosure of residential addresses. Subsection (a) of the statute prohibits public agencies from releasing the residential addresses of certain covered persons from the agencies' personnel, medical, or similar files, only. Subsection (d) of

[1] The Commission believes that the addition of "judicial marshals" to §1-217 seems to be unnecessary as the statute already exempts from disclosure the residential addresses of "an employee of the judicial branch".

[2] The Commission questions why the proposal seeks to include only ADS employees within the Disability Determination Services Unit and the Bureau of Rehabilitation Services. Why are such employees considered to be more "at risk" than other ADS employees? An argument can be made that all public employees should be afforded protection under §1-217.

the statute provides that the residential addresses of certain covered persons may not be removed from land records, voter records, and grand lists. And subsection (c) establishes a process whereby a covered employee can request that public records other than personnel files, voter records, land records, and grand lists, which might contain his or her residential address, be altered to substitute a business address. However, the public agency only needs do its best efforts to accommodate such a request.

Section §1-217 is not the panacea that many believe it to be and provides employees with a false sense of comfort and security. The categories of workers already included in §1-217 and those seeking to be added to §1-217 must be informed that inclusion under the statute should not be viewed as a cure for safety and privacy concerns.

Finally, the reality is that times have changed since the initial enactment of §1-217. For better or worse, the fact is that the residential addresses of most people are now readily available for free, or for a nominal charge, on the Internet and through other commercial services.

Section 2

Section 2 of Senate Bill 1157 pertains to requests made to a public agency for an employee's personnel, medical or similar files and the process that agencies must follow in response to such requests.

The proposal requires that, in the case of a "mass request" for employee personnel, medical or similar files, a public agency, *prior to disclosing* such records, must make a reasonable attempt to notify each employee concerned and the collective bargaining representative, if any. Under the proposal, an agency would have to first provide notice to the employees and collective bargaining representative, if any, even if the agency does not believe that disclosure would constitute an invasion of the employees' privacy. Such proposal does not make sense and is unnecessary.

In 2018, the General Assembly amended the notice requirements in §1-214(b) of the FOI Act to require, whenever a public agency receives a request for an employee's personnel, medical or similar files, and the agency reasonably believes that the disclosure of such records would *not* constitute an invasion of privacy, the agency must *first disclose* the requested records, and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to notify each employee and collective bargaining representative, if any.[3] Such notice requirements are not limited to requests for a single employee's personnel, medical or similar files; the notice requirements are the same regardless of how many employees' files are requested. If an agency determines that the disclosure of such records would *not* constitute an invasion of privacy, such records *must* be disclosed regardless of whether a request concerns a single employee or more than fifty employees.

In addition, based on the FOI Commission's experience with the employee notice provisions in the FOI Act, the Commission believes that once the fifty or more employees are notified of a request, many, if not all, of the employees likely will object to disclosure, regardless of the

[3] *See* Public Act 18-93, *An Act Concerning Employee Notification of Requests Made Under the Freedom of Information Act.*

nature of the record. Once an employee objects, the public agency must withhold the record unless ordered by the Commission to disclose it, which would require an evidentiary hearing and deliberation by the full Commission. Withholding a record, the disclosure of which the agency does *not* reasonably believe would constitute an invasion of the employee's privacy, is unwarranted and would almost assuredly lead to a waste of state resources.

For these reasons, the FOI Commission urges the rejection of Senate Bill 1157.

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